has been held to relieve the surety. *Sullivan* v. *State*, 59 Ark. 47. But proof in bankruptcy involves possibilities too onerous to bring it within this exception.

SURETYSHIP — DEFENSE OF OMISSIONS OF CREDITOR — NECESSITY OF NOTICE TO GUARANTOR OF ACCEPTANCE. — At the plaintiff's request the defendant wrote to him a letter guaranteeing payment for any goods A might purchase of him. Goods were then furnished to A by the plaintiff. The defendant's relations with A were such as should have kept him informed as to the transactions between A and the plaintiff. On A's failure to pay the purchase price the plaintiff sought to hold the defendant. *Held*, that lack of notice of acceptance of the defendant's guaranty is no bar to recovery. *Drucker* v. *Heyl-Dia*, 52 N. Y. Misc. 142. See NOTES, p. 485.

SURETYSHIP — DEFENSE OF SUSPENSION OF PRINCIPAL OBLIGATION — FRAUDULENT PREFERENCE TO CREDITOR. — The defendant, with knowledge of the insolvency of the maker of a note, accepted payment. Within four months the maker was adjudicated a bankrupt, and the plaintiff, the trustee in bankruptcy, recovered the payment. *Held*, that the defendant may recover on the note against the indorser and the sureties. *Hooker* v. *Blount*, 97 S. W. Rep. 1083 (Tex., Civ. App.). See NOTES, p. 484.

TAXATION — PARTICULAR FORMS OF TAXATION — TAX WITHIN MEANING OF BANKRUPTCY ACT. — A corporation went into bankruptcy owing the state for its annual license or franchise tax. *Held*, that the state is entitled to a preference over other creditors, as this is a tax within the meaning of § 64 *a* of the Bankruptcy Act. *State of New Jersey* v. *Anderson*, U. S. Sup. Ct., Dec. 10, 1906. See NOTES, p. 490.

TRUSTS — FOLLOWING TRUST PROPERTY — EQUITABLE LIENS ARISING FROM UNLAWFUL DEPOSIT. — A national bank unlawfully received on deposit a large sum of county taxes, mingled it with other deposits, and purchased worthless securities therewith. Into these securities could fairly be traced three-fourths of the county's deposit along with a much larger sum of the bank's own. The bank became insolvent, leaving assets insufficient to meet the county's claim. *Held*, that the county may get from the receiver the lowest amount continually on deposit during this period and also the entire proceeds of the securities. *Crawford Co. Commissioners* v. *Patterson*, 149 Fed. Rep. 229 (Circ. Ct, N. D. Oh., E. D.).

Though its reasoning is confused, the court's conclusion is sound. There was in fact an equitable lien on each fund. For a discussion of the true view, see 19 HARV. L. REV. 511.

WATERS AND WATERCOURSES — SUBTERRANEAN AND PERCOLATING WATERS — APPROPRIATION OF MINERALS IN SOLUTION. — The defendant, by pumping brine from his mine, abstracted salt from the plaintiff's mine. The plaintiff sought to enjoin him and to recover for the salt already withdrawn. *Held*, that the defendant has committed no actionable wrong. *The Salt Union, Ltd.* v. *Brunner, Mond & Co.*, [1906] 2 K. B. 822. See NOTES, p. 487.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

TAXATION OF GROSS RECEIPTS OF INTERSTATE CARRIERS. — For over fifty years the Illinois Central Railroad, an interstate carrier, has paid to the state of Illinois, in accordance with stipulations in its charter, five per cent of its gross receipts in addition to the usual property tax. A suit recently instituted by it against the state to recover back a portion of the taxes so paid has

prompted Professor Schofield, of the Northwestern University Faculty of Law, to consider in a recent article the constitutional validity of this form of taxation. *The State Tax on Illinois Central Gross Receipts and the Commerce Power of Congress*, 1 Ill. L. Rev. 440 (February, 1907).

To the question whether a state may constitutionally levy such a tax on gross receipts the United States Supreme Court has given seemingly contradictory answers. In 1873 it upheld the tax, in State Tax on Railway Gross Receipts.[1] In 1887, in Philadelphia, etc., Steamship Co. *v.* Pennsylvania,[2] it expressly disapproved the earlier case. And in 1891, in Maine *v.* Grand Trunk R. R. Co.,[3] it apparently returned in part to its original view, holding valid a tax ascertained by multiplying the railroad's average gross receipts per mile over its entire system by the number of miles within the taxing state. The ground taken by the five judges who constituted the majority, that the tax might be supported as an excise, seems unsound, as an interference with the commerce power of Congress. It may, however, be sustained on the theory that, if in lieu of the ordinary property tax and not in excess of it, it was in its essence a franchise tax based on the value of the property within the state.[4]

Professor Schofield, after stating the question at issue, proceeds: "Viewing it merely as a state law, laying a tax upon gross receipts, and including in the gross receipts those derived from transporting goods and passengers in the way of interstate commerce, the provision [in the Illinois Railroad's charter] is probably bad." This proposition is certainly sound if confined to assessments on gross receipts resulting from interstate transactions as such. But apparently Professor Schofield thinks it constitutionally impossible to devise a state rule for apportioning gross receipts of an interstate road when the haul begins or ends in the state, so as to subject even a part to the taxing power, on the ground that the price paid for an interstate haul is of necessity indivisible. This differs widely, he says, from a tax upon the property of the railroad, in which case the mileage rule of apportionment may be applied for the purpose of fixing the taxable value of the interstate property.

There is undoubtedly some distinction between the two species of taxation. The question is, should this change the result? The Grand Trunk case, while recognizing the distinction, seems to say it is one without a difference in any case where the gross receipts tax is apportioned, and is substituted for a property tax. It is true, that as the Illinois gross receipts tax was not a substitution, but an addition, and was not even apportioned, it does not come within the rule of the Grand Trunk case. Nevertheless the discussion of the subject, in making no reference to the latest utterance on the subject by the United States Supreme Court, is incomplete. The article relies mainly on a dissenting opinion of Mr. Justice Miller in the State Tax on Railway Gross Receipts case. While this is an almost prophetic enunciation of the present-day tendency to extend the power of Congress under the commerce clause, it is of little real authority today. It seems clear that Professor Schofield could have effectively shown the invalidity of the Illinois tax by relying on the Philadelphia Steamship case, which is overruled only in the situation where the tax in question is a substitution for a property tax and is apportioned on some just basis so as to separate as accurately as possible the proportion of gross receipts actually earned within the state.[5]

RATIFICATION OF AN UNAUTHORIZED CONTRACT OF INSURANCE AFTER THE OCCURRENCE OF LOSS. — Of the many unsettled problems in the law of ratification Mr. Frederick T. Case has selected one of the more difficult, and in a recent article has given it what is probably its first thoughtful treatment.

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[1] 15 Wall. (U. S.) 284.
[2] 122 U. S. 326.
[3] 142 U. S. 217.
[4] Postal Telegraph Cable Co. *v.* Adams, 155 U. S. 688; see, generally, 17 HARV. L. REV. 248, 261–263.
[5] See Cumberland, etc., R. R. Co. *v.* Maryland, 92 Md. 668.